

**Republic of Macedonia**  
**Commission for Protection of Competition**  
**Commission for misdemeanor procedure**

**GUIDELINES ON THE METHOD OF SETTING FINES IMPOSED PURSUANT TO  
LAW ON PROTECTION OF COMPETITION**

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## **Guidelines on the method of setting fines imposed pursuant to law on protection of competition**

### **INTRODUCTION**

1. Pursuant to Law on Protection of Competition (“Official Gazette of the Republic of Macedonia” 145/10), (further” LPC) the Commission for the misdemeanor matters (further: CMM) may by decision impose fines on undertakings or associations of undertakings where, either intentionally or negligently, they infringe of LPC .
2. In exercising its power to impose such fines, the CMM enjoys a wide margin of discretion within the limits set by the LPC and Law on misdemeanor (“Official Gazette of the Republic of Macedonia” 62/06). First, pursuant to article 64 of the LPC, when determining the fine CMM takes into account the seriousness of the misdemeanor, the duration of the misdemeanor and the extent of distortion of competition and the effects caused by the misdemeanor. Second, the fine imposed may not exceed the limits specified by the LPC.
3. The CMM's power to impose fines on undertakings or associations of undertakings which, committed the misdemeanor set by the LPC is one of the means conferred on it in order for it to carry out the task of supervision entrusted to it referred to in Article 6 of the LPC. That task not only includes the duty to investigate and sanction individual misdemeanors stipulated by the LPC, but it also encompasses the duty to pursue a general policy designed to apply, in competition matters, the principles laid down by the LPC and to steer the conduct of undertakings in the light of those principles. For this purpose, the CMM must ensure that its action has the necessary deterrent effect. Accordingly, when the CMM discovers that the misdemeanor was committed, it impose a fine on those who have acted in breach of the LPC. Fines should have a sufficiently deterrent effect, not only in order to sanction the undertakings concerned (specific deterrence) but also in order to deter other undertakings from engaging in, or continuing, behavior that is contrary to LPC (general deterrence).
4. In order to achieve these objectives, it is appropriate for the Commission to refer to the value of the sales of goods or services to which the infringement relates as a basis for setting the fine. The duration of the infringement should also play a significant role in the setting of the appropriate amount of the fine. It necessarily has an impact on the potential consequences of the misdemeanor on the market. It is therefore considered important that the fine should also reflect the number of years during which an undertaking participated in the misdemeanor.
5. The combination of the value of sales to which the infringement relates and of the duration of the misdemeanor is regarded as providing an appropriate proxy to reflect the economic importance of the misdemeanor as well as the relative weight of each undertaking in the misdemeanor. Reference to these factors provides a good indication of the order of magnitude of the fine and should not be regarded as the basis for an automatic and arithmetical calculation method.

6. It is also considered appropriate to include in the fine a specific amount irrespective of the duration of the infringement, in order to deter undertakings from even entering into illegal practices.

## **METHOD FOR THE SETTING OF FINES**

7. Pursuant to Article 64 of the LPC, the CMM will use the following two-step methodology when setting the fine to be imposed on undertakings or associations of undertakings.

8. First, the CMM will determine a basic amount for each undertaking or association of undertakings laid down by LPC.

9. Second, CMM may adjust that basic amount upwards or downwards.

### **1. Basic amount of the fine**

10. The basic amount will be set by reference to the value of sales and applying the following methodology.

#### **A. Calculation of the value of sales**

11. The basic amount of the fine shall as a rule amount in up to 30% of the revenue of the perpetrator of the misdemeanor earned from the activity performed on the relevant market on which the misdemeanor has been committed in the last complete business year when the perpetrator of the misdemeanor participated therein. The amount determined in such a manner shall be multiplied by the number of years during which the misdemeanor lasted.

12. Where the infringement by an association of undertakings relates to the activities of its members, the value of sales will generally correspond to the sum of the value of sales by its members.

13. In determining the value of sales by an undertaking, the CMM will take that undertaking's best available figures.

14. Where the figures made available by an undertaking are incomplete or not reliable, the CMM may determine the value of its sales on the basis of the partial figures it has obtained and/or any other information which it regards as relevant and appropriate.

15. The value of sales will be determined before VAT and other taxes directly related to the sales.

#### **B. Determination of the basic amount of the fine**

16. The basic amount of the fine will be related to a proportion of the value of sales, depending on the degree of gravity of the misdemeanor, multiplied by the number of years of misdemeanor.

17. The assessment of gravity will be made on a case-by-case basis for all types of misdemeanor, taking account of all the relevant circumstances of the case.

18. As a general rule, the proportion of the value of sales taken into account will be set at a level of up to 30 % of the value of sales.
19. In order to decide whether the proportion of the value of sales to be considered in a given case should be at the lower end or at the higher end of that scale determined in point 18, the CMM will have regard to a number of factors, such as the nature of the misdemeanor, the combined market share of all the undertakings concerned, the geographic scope of the misdemeanor.
20. Horizontal price-fixing, market-sharing and output-limitation agreements, which are usually secret, are, by their very nature, among the most harmful restrictions of competition. As a matter of policy, they will be heavily fined. Therefore, the proportion of the value of sales taken into account for such misdemeanor will generally be set at the higher end of the scale determined in point 18.
21. In order to take fully into account the duration of the participation of each undertaking in the misdemeanor, the amount determined on the basis of the value of sales will be multiplied by the number of years of participation in the misdemeanor,. Periods of less than six months will be counted as half a year; periods longer than six months but shorter than one year will be counted as a full year.
22. In addition, irrespective of the duration of the undertaking's participation in the misdemeanor, the CMM will include in the basic amount a sum of between 15 % and 25 % of the value of sales as defined in Section A above in order to deter undertakings from even entering into horizontal price-fixing, market-sharing and output limitation agreements.. The CMM may also apply such an additional amount in the case of other misdemeanor.
23. Where the value of sales by undertakings participating in the misdemeanor is similar but not identical, the CMM may set for each of them an identical basic amount. Moreover, in determining the basic amount of the fine, the CMM will use rounded figures.

## **2. Adjustments to the basic amount**

24. Pursuant to Article 64 paragraph (4) of the LPC in setting the fine, the CMM may take into account circumstances that result in an increase or decrease in the basic amount as determined in Section 1 above. It will do so on the basis of an overall assessment which takes account of all the relevant circumstances.

### **A. Aggravating circumstances**

25. Pursuant to Article 64 paragraph (6) of the LPC the basic amount may be increased where the CMM finds that there are aggravating circumstances, such as:
  - If CMM finds that misdemeanor has been committed which is stipulated by the provisions of LPC and the perpetrator of the misdemeanor continues to commit the misdemeanor or repeats the same or similar misdemeanor. In such a case, the basic amount may be increased by up to 100% for every such misdemeanor established.

- refuse to cooperate or has impeded the Commission for Protection of Competition or CMM with or obstruction of the CMM from conducting the procedure;
- if the perpetrator has had the role of a leader or instigator of the misdemeanour. The CMM shall, in particular, take into consideration whether the perpetrator of the misdemeanour has undertaken actions directed at instigating other undertakings to take part in the misdemeanour and/or has taken any vindictive measures against other undertakings with a view to coercing them into taking actions which constitute a misdemeanour.

## **B. Mitigating circumstances**

26. Pursuant to Article 64 paragraph (5) of the LPC the basic amount may be reduced where the CMM finds that mitigating circumstances exist, in particular:

- if the perpetrator of the misdemeanour has presented proof that they have terminated the actions which constitute a misdemeanour at the time when the CMM has initiated a misdemeanour procedure, except when it concerns a misdemeanour referred to in Article 7 paragraph (1) item 1) of the LPC
- if the perpetrator of the misdemeanour presented proof that their involvement in the misdemeanour is minimal and proves that while he was a participant in a prohibited agreement, he actually avoided its application acting in a competitive manner on the relevant market; the mere fact that an undertaking participated in an misdemeanour for a shorter duration than others will not be regarded as a mitigating circumstance since this will already be reflected in the basic amount;
  - If the perpetrator of the misdemeanour presented proof that the misdemeanour was committed by negligence
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- where the undertaking concerned has effectively cooperated with the CMM outside the scope of the Article 65 (Leniency) of the LPC;
- where the anti-competitive conduct of the undertaking has been supported or encouraged by public authorities, organization or by other authority empowered to perform public duties or legally binding act.

## **C. Specific increase for deterrence**

27. Pursuant to Article 64 paragraph (7) of the LPC the CMM may increase the basic amount of the fine to the perpetrator of a misdemeanour having particularly high revenues which also derive from other activities, not only from the activity performed on the relevant market where the misdemeanour has been committed in order to reach a deterring effect of the fine.

28. Pursuant to Article 64 paragraph (8) of the LPC the CMM may also take into account the need to increase the fine in order to exceed the amount of gains improperly made as a result of the misdemeanour where it is possible to estimate that amount.

#### **D. Leniency**

29. The CMM will apply the leniency rules set out in the Article 65 (Leniency) of the LPC and applicable Regulation.

#### **E. Ability to pay**

30. Pursuant to Article 64 paragraph (9) of the LPC the CMM may, upon request, take account of the undertaking's inability to pay in a specific social and economic context. It will not base any reduction granted for this reason in the fine on the mere finding of an adverse or loss-making financial situation. A reduction could be granted solely on the basis of objective evidence that imposition of the fine as provided for in these Guidelines would irretrievably jeopardise the economic viability of the undertaking concerned and cause its assets to lose all their value.

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